

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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GABRIEL MOSES BURKE,

Plaintiff,

v.

FIEN COFFEE,

Defendant.  
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**MEMORANDUM AND ORDER**

23-CV-2742(OEM)(TAM)

ORELIA E. MERCHANT, United States District Judge:

On April 12, 2023, plaintiff Gabriel Burke (“Plaintiff”) filed the instant action against defendant Fine Coffee (“Defendant”), seeking injunctive relief to remedy Defendant’s alleged violations of the Americans with Disabilities Act (the “ADA”). Complaint (“Compl.”), ECF 1 at 5-6.

On April 5, 2024, Magistrate Judge Merkl issued an Order to Show Cause, ECF 16, directing Plaintiff to show cause by April 12, 2024, why this case should not be dismissed pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. To date, Plaintiff has not responded to Magistrate Judge Merkl’s April 5, 2024 Order to Show Cause.

On April 18, 2024, Magistrate Judge Merkl issued a sua sponte report and recommendation (the “R&R”), ECF 17, recommending that this case be dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. The R&R clearly stated that “[o]bjections to this Report and Recommendation must be filed, with a courtesy copy sent to the Honorable Orelia E. Merchant at 225 Cadman Plaza East, Brooklyn, New York 11201, within fourteen days of filing. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(a) (providing the method for computing time). Failure

to file objections within the specified time waives the right to appeal the District Court's order. *See, e.g., Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008) (explaining that "failure to object timely to a . . . report [and recommendation] operates as a waiver of any further judicial review of the magistrate[] [judge's] decision") (quotation marks omitted))." R&R at 4. To date, no party has filed an objection to the R&R.

If clear notice has been given of the consequences of failing to object and there are no objections, the Court may adopt the R&R without de novo review. *See Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) ("Where parties receive clear notice of the consequences, failure to timely object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision.") (internal citations omitted). The Court will excuse the failure to object and conduct de novo review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000). No such error appears in Magistrate Judge Merkl's thorough and well-written decision. Accordingly, the Court adopts the R&R.

Accordingly, this case is hereby dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. The Clerk of Court is respectfully directed enter a judgment in accordance with this Order and to close this case.

**SO ORDERED.**

/s/  
**ORELIA E. MERCHANT**  
**United States District Judge**

Dated: Brooklyn, New York  
May 29, 2024